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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry	)	MM Docket No. 92-51

COMMENTS

The National Association of Black Owned Broadcasters, Inc. ("NABOB"), by its attorneys, hereby submits its Comments in the above-captioned proceeding. NABOB agrees with the overall objective of this proceeding and supports most of the proposals set forth in the NPRM, and in particular supports allowing the increased attribution threshold for MESBICs. However, NABOB submits that there is no basis for changing the Commission's policies to allow security interests in broadcast licenses for third parties or to allow reversionary interests in broadcast licenses to licensees who sell their stations. NABOB also suggests in response to the NOI that the Commission expand the transactional situations in which a party may receive a minority tax certificate. In support of these positions, NABOB submits the following:

I. NABOB SUPPORTS THE INCREASED ATTRIBUTION THRESHOLD FOR MESBICS

1. The Commission has correctly noted in the NPRM that minorities have historically found difficulty in obtaining adequate financial backing to become station licensees. NPRM and NOI, MM Docket No. 92-51, FCC 92-96, (April 1, 1992) at para. 1.

Therefore, NABOB fully supports the Commission's decision to propose changes in its policies and rules which may be helpful in attracting capital to the broadcast industry.

2. In general, the Commission's proposals appear to offer some revisions to its rules which may provide some benefit to companies seeking to acquire or improve broadcast facilities. NABOB has some general concerns that the proposed increased attribution thresholds may increase the concentration of control of stations. However, most of these concerns can be addressed through proper enforcement of any revised attribution rules.

3. The proposal to increase the attribution threshold for MESBICs is a very positive aspect of the NPRM. The MESBIC industry has been very instrumental in financing the entry into ownership for many NABOB members. Therefore, NABOB supports the increased attribution level proposed for MESBICs.

II. THE PUBLIC INTEREST WILL NOT BE SERVED BY ALLOWING LENDERS AND SELLERS TO OBTAIN SECURITY AND/OR REVERSIONARY INTERESTS IN BROADCAST LICENSES

4. The proposals set forth in the NPRM to allow third party lenders to obtain a security interest in broadcast licenses and to allow licensee sellers to retain a reversionary interest in broadcast licenses would not be likely to produce any public interest benefit and could cause substantial harm to the public interest. The proposal to allow third party creditors to obtain a security interest in a broadcast license starts from the faulty premise that allowing such a creditor to obtain such an interest

will make the creditor more inclined to make a broadcast loan. Experience shows that banks and other financial institutions, the lenders most frequently having the secured positions in broadcast loans, make loans based upon the expectation that they will never have to exercise any security rights. In other words, bank loan officers approve loans only because the station's financial projections demonstrate that the loan can be repaid in full, not in anticipation of benefits to be gained in the event of default.

5. For over 50 years broadcasting has been able to attract enough capital to grow into a major industry without bankers obtaining a security interest in broadcast licenses. The industry was able to do this because stations could show financial projections based upon historic industry growth. Financial projections and the corresponding revenue stream are not tied to the credit agreement. They are tied to the debt payment structure and the associated covenants. Therefore, the provision of additional security to the lender will not positively affect a station's cash flow projections in a poorly performing market. Only relaxation of the debt payment schedule will accomplish that goal. Until the current national recession ends, the economy turns around, and broadcasters can once again project strong revenue streams, offering lending institutions a security interest in the broadcast license will serve no meaningful purpose.

6. On the other hand, allowing third party creditors to obtain a security interest in the broadcast license will have a negative impact on station ownership. As Capstar Communications,

Inc. and other parties pointed out in their earlier comments, allowing lenders to have a property right in a broadcast license would create chaos for the Commission's regulatory processes. Creditors using state laws governing security interests may be given the right to seize stations prior to approval by the Commission.

7. Additionally, a lender which felt that it had a property interest in a broadcast station could be expected to attempt to exert control or influence over the operation of the station. This problem would be particularly significant in the case of a licensee which had sold its station and had retained a reversionary interest in the station. Such a seller would be a very serious threat to the Commission's regulatory scheme. A seller with a reversionary interest would be fully familiar with the operation of the station and would be able to assume control very quickly. Such a seller would be unlikely to cooperate with a defaulting borrower. In particular, a seller which sold during bad financial times might seek ways to declare a new owner in default once the station turned around. Such abusive use of the revisionary interest would lead to injury to the public's interest in a stable and diverse broadcast marketplace.

8. The Commission has recently allowed the industry to substantially expand the use of joint venture agreements (time brokerage and local market agreements). These agreements will require ongoing monitoring to determine whether they are being abused as a means of improperly transferring control of broadcast

licenses. The proposals to allow reversionary rights and security interests in broadcast licenses create additional problems of potential unauthorized transfers of control which also would require monitoring. These changes should not all be implemented at the same time. Such a group of changes has the potential to create major disruption in the industry. Therefore, even if these proposals were to be favorably considered by the Commission, they should not be implemented until the Commission has fully assessed the impact of its joint venture rule changes.

9. More importantly, allowing third party creditors to obtain security interests in broadcast licenses and allowing seller licensees to retain a reversionary interest in broadcast licenses would violate Sections 301, 304, 309(h)(1), 309(h)(2) and 310(d) of the Communications Act. The Commission's analysis in Bill Welch, 3 FCC Rcd 6502, 6503 (1988), does not justify changing the Commission's long standing policy in this area. Kirk Merkley, 94 FCC 2d 829 (1983); Radio KDAN, 11 FCC 2d 934, on recon. 13 RR 2d 100, 102 (1968), aff'd on other grounds sub nom. Hansen v. FCC, 413 F.2d 374 (D.C. Cir. 1969). Allowing a sale of a bare cellular permit is not the same as allowing state property laws, designed to allow prompt repossession of personal property, to be applied to an FCC license. The latter clearly treats a broadcast license as chattel and is not permitted under the Communications Act.

III. THE COMMISSION SHOULD CONSIDER EXPANDED USE OF THE TAX CERTIFICATE TO ATTRACT ADDITIONAL CAPITAL TO THE BROADCAST INDUSTRY

10. The Commission's NOI concludes with a general request for comments on additional steps the Commission could pursue to facilitate access by broadcasters to capital markets. NPRM and NOI at para.24. NABOB submits that the principal mechanism at the Commission's disposal for assisting minority broadcasters in obtaining access to capital markets is the minority tax certificate. The tax certificate has been the most successful policy the Commission has ever had to encourage minority ownership of broadcast properties. However, during the recent nationwide recession, many stations have been sold at little or no profit to the seller. In these circumstances, the tax certificate is of no value to the seller.

11. Therefore, NABOB suggests that the Commission consider expansion of the tax certificate policy such that it can assist buyers of stations which are not being sold for a profit. Such expansion should provide increased benefits for investors in a minority company which is acquiring a license and special tax benefits for lending institutions financing minority buyers. Obviously, these ideas require full development and further analysis. NABOB suggests that the recently announced Small Business Advisory Committee[1] be directed to fully consider and develop such expanded policies.

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[1] See Public Notice FCC Establishes Small Business Advisory Committee, dated March 12, 1992.

IV. CONCLUSION

12. NABOB supports the Commission's efforts to expand access to capital for the broadcast industry. NABOB supports increasing the attribution threshold for MESBICs. NABOB, however, does not support the proposed allowance of security interests in broadcast licenses to third party creditors and does not support allowing licensee sellers to retain a reversionary interest in broadcast licenses. NABOB also requests that the Commission expand the tax certificate policy to make it available in a wider group of transactions.

Respectfully submitted,

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